



Paper No. 13

KATHRYN CAMPBELL  
CAMPBELL & FLORES, LLP  
4370 LA JOLLA VILLAGE DRIVE  
7TH FLOOR  
SAN DIEGO, CA 92122-1252

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In re Application of  
Karin et al.  
Application No. 09/377,795  
Filed: August 20, 1999  
Attorney Docket No. P-UD 3613

**OFFICE OF PETITIONS  
ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b), filed on January 9, 2002 (Certificate of Mailing date December 13, 2001), to revive the above-identified application.

The petition is **GRANTED**.

A non-final Office Action was mailed on February 13, 2001 ("2/13/01 non-final Office Action"), setting forth a shortened statutory period of 3 months for reply. No response was filed and no extension of time under 37 CFR 1.136(a) was obtained. The application thus became abandoned on May 14, 2001 for failure to timely submit a proper reply to this office action.<sup>1</sup> A Notice of Abandonment was mailed on September 21, 2001.

Although the instant petition is entitled "Petition to Revive Unintentionally Abandoned Application Under 37 CFR 1.137(b)," it nevertheless asserts that a reply to the 2/13/01 non-final Office Action was mailed on June 11, 2001 along with a certificate of mailing and a request for a 1-month extension of time for filing that reply. Where, as in here, there is a question regarding whether a document was received by the Office, the Office will rely on its official records, i.e., the contents of the pertinent application file, absent convincing evidence such as a properly completed postcard receipt<sup>2</sup> suggesting that the Office has received and subsequently misplaced that document which is not contained in the Office file for this application.<sup>3</sup> The official records for

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<sup>1</sup> 37 CFR 1.135(a); also see MPEP 711.04(a) (Aug. 2001): "[T]he date of abandonment is after midnight of the date on which the set shortened statutory period, including any [obtained] extensions under 37 CFR 1.136, expired." Even though under 37 CFR 1.7(a), a required reply to the 2/13/01 non-final Office Action filed on or before 5/14/01 (Monday) would have been considered "timely," failure to file such a reply on or before 5/14/01 renders the application abandoned as of 5/14/01. The maximum extendable reply period would end on 8/13/01 had the maximum 3-month extension of time been timely obtained.

<sup>2</sup> MPEP section 503 (Aug. 2001).

<sup>3</sup> See MPEP section 513 (Aug. 2001).

this application, unfortunately, do not contain the reply allegedly mailed on June 11, 2001. Neither does the instant petition provide any evidence supporting the assertion that a reply to the 2/13/01 non-final Office Action had been timely received in the PTO, and was subsequently misplaced. Therefore, the assertion that the application should not be considered abandoned because a reply to the 2/13/01 non-final Office Action was timely filed is not convincing.

On the other hand, the instant petition contains an Amendment and Response to Office Action Mailed February 13, 2001, and the \$640 petition fee (small entity). The petition also includes a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Although the petition contends that the application is not abandoned, and that "any time Applicants spent discerning options to petition for the withdrawal of the holding of abandonment was incidental to the unintentional loss or mutilation of the papers Applicants deposited with the U.S. Postal Service on June 11, 2001," the statement contained in the petition is being construed as meeting the requirement of 37 CFR 1.137(b)(3). The petition to revive under 37 CFR 1.137(b) is thus granted. Petitioner must notify the Office if the above is **not** a correct interpretation of the statement contained in the instant petition.

The instant petition also encloses a \$460 payment intended for an extension of time for filing the required reply with the instant petition. However, an extension of time under 37 CFR 1.136 may only be filed prior to the expiration of the maximum extendable period for reply.<sup>4</sup> The request for extension of time submitted with the instant petition is not applicable, in that, it is subsequent to the maximum extendable period for reply, i.e., subsequent to August 13, 2001.<sup>5</sup> The fee is therefore not necessary and has been credited to Deposit Account No. 08-1290 as authorized in the instant petition.

Finally, the Office notes that the practitioner filing the instant petition does not appear to have been given a power of attorney or authorization of agent to prosecute this application. Also, an address different from that in the Office record was utilized. If this practitioner desires to receive future correspondence regarding this application, an appropriate power of attorney or authorization of agent as well as a change of correspondence address must be submitted. While a courtesy copy of this decision is being mailed to this practitioner, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

This application is being forwarded to Technology Center 1600 for further examination.

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<sup>4</sup> In re Application of S., 8 U.S.P.Q.2d 1630, 1631 (Comm'r Pats. 1988).

<sup>5</sup> See note 1, *supra*.

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.



Beverly M. Flanagan  
Supervisory Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy



RC Tang  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

cc: Medlen & Carroll, LLP  
101 Howard Street, Suite 350  
San Francisco, CA 94105  
Attorney Docket No. UCSD-04523